

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

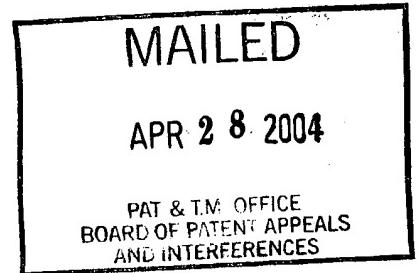
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JORN LEIBER, BERND LUHMAN, THOMAS RAADTS, RALF SCHLIEPHACKE, PETER KUBASCH, JAN CHAL, HANSJURGEN LINDE, UWE NEUMANN, and HANS HAZES

Appeal No. 2002-2278
Application No. 08/976,820

HEARD: MARCH 5, 2003



Before PAK, LORIN, and JEFFREY T. SMITH, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

ON REQUEST ON REHEARING

Appellants request a rehearing of the Board's decision entered March 26, 2003, wherein we affirmed the examiner's decision rejecting claims 20 through 31 under 35 U.S.C. § 103.

Appellants argue that substantial evidence does not support our finding that one of ordinary skill in the art can infer from the teachings of Lühmann that "grip tabs can be provided to each and every side or some of the sides of a given geometrically

Appeal No. 2002-2278
Application No. 08/976,820

shaped adhesive tape to substantially or fully surround the tape's edge." We do not agree.

As indicated at pages 6 and 7 of our earlier decision entered March 26, 2003, Lühmann broadly teaches:

[A] tab is recommended in each case to enable easier pulling on the residue. Such a tab can be designed, in particular, so that the non-adhesive areas extend around an edge of the piece of adhesive film.

As also indicated at page 6 of our earlier decision entered March 26, 2003:

As acknowledged by the appellants (Brief, page 16), Luhmann exemplifies **a plurality of grip tabs** attached to two different sides of a quadrangle shaped adhesive tape [emphasis ours].

When these teachings are read together, i.e., when Lühmann is viewed in its entirety, it is reasonable to infer that "an edge of the piece of adhesive film" as taught in Lühmann includes either any part of the entire edge or the entire edge of a given geometric shaped adhesive tape. This is especially true in this case since appellants do not dispute that the given geometric shaped adhesive tape taught in Lühmann includes a circular shaped adhesive tape (a tape having an edge (single edge)). See the Request for Rehearing dated May 29, 2003, page 3. Thus, we conclude that there is no reversible error in determining that one of ordinary skill in the art can reasonably infer from

Appeal No. 2002-2278
Application No. 08/976,820

Lühmann as a whole "that grip tabs can be provided to each and every side or some of the sides of a given geometrically shaped adhesive tape to substantially or fully surround the tape's edge."

In any event, in view of the findings set forth in our earlier decision entered March 26, 2003, page 6, we determine that:

[O]ne of ordinary skill in the art would have been led to design the double-side[d] adhesive tape described in Luhmann in various shapes, including the claimed geometrical shapes, with grip tabs attached to and surrounding part or the entire area of the edge of the adhesive tape, with a reasonable expectation of successfully forming double-sided adhesive tapes having the advantageous properties [i.e., easier pulling on the residue] indicated in Luhmann.

The suggestion and reasonable expectation of success can be gleaned from Lühmann's teachings regarding the advantage of employing one or more grip tabs on a given double-sided adhesive tape.

To the extent that Lühmann is interpreted as teaching only one grip tap on one side of an adhesive tape as urged by appellants, we still determine (the decision entered March 26, 2003, page 7) that:

[I]t is well within the ambit of one of ordinary skill in the art to provide an appropriate number of grip tabs, including the number of grip tabs corresponding to the sides of given geometrically shaped adhesive tapes, to provide contingent bases in the case of failure of one or more grip tabs in removing the adhesive tape **since Lühmann teaches that the grip tabs can be pulled at any angle and are used to remove the residues of the adhesive tapes as indicated supra** [emphasis ours].

Lühmann's teaching provides implicit suggestion that any number of grip tabs at any side of a given tape is useful for obtaining the advantage indicated in Lühmann, e.g., easier pulling on the tape residue.

Appellants, for the first time, rely on a Rule 132 declaration executed by one of the inventors listed in the Lühmann reference and, for the first time, set forth arguments relating to the declaration. However, we decline to consider the declaration or appellants' arguments relating thereto since appellants fail to provide good and sufficient reasons for considering the newly introduced declaration and arguments. As stated in 37 CFR § 1.195 (2001):

Affidavits, declarations or exhibits submitted after the case has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented.

Appeal No. 2002-2278
Application No. 08/976,820

As also stated in 37 CFR § 1.192 (a) (2001):

Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

In view of the foregoing, we are unconvinced of any error in our earlier decision. Hence, appellants' request for rehearing is granted to the extent of reconsidering our decision, but is denied with respect to making any change therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

CKP/hh
REHEARING DENIED

CHUNG K. PAK)

Administrative Patent Judge)

HUBERT C. LORIN)

Administrative Patent Judge)

JEFFREY T. SMITH)

Administrative Patent Judge)

)
BOARD OF PATENT
APPEALS AND
INTERFERENCES

CKP:hh

Appeal No. 2002-2278
Application No. 08/976,820

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